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09/623,008	08/24/2000	Carlos Ernesto Koster	ASA-101	5469

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EXAMINER

CHORBAJI, MONZER R

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 14

Application Number: 09/623,008
Filing Date: August 24, 2000
Appellant(s): Carlos Ernesto KOSTER

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 07/03/2003.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

No Amendments after Final Rejections were filed after the Final Office Action dated January 30, 2003.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of claims 1 and 3 stand or fall together because appellant's brief does include a statement that this grouping of claims does not stand or fall together but fails to provide reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

5,300,265	Banks et al.	4-1994
5,326,543	Fiorenzano, Jr.	7-1994

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

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1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1, 3, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Banks et al (U.S.P.N. 5,300,265) in view of Fiorenzano, Jr. (U.S.P.N. 5,326,543).

With respect to claims 1, 3, and 5, Banks et al discloses a method for the treatment of goods with carbon dioxide and nitrogen (col.1, lines 44-46 and col.5, lines 36-40) at a location of goods (col.5, lines 53-55) by washing (col.1, lines 54-56), filtering (figure 1, 12 and 13), cooling (figure 1, 7 or 9 or 10), and catalyzing of other gas sources (figure 1, 3 and 5). Furthermore, Banks teaches that the exhaust of any engine can be used (abstract, lines 1-2 and col.4, lines 62-64). However, Banks fails to disclose explicitly the use of the exhaust of ships or boilers. Fiorenzano, Jr. discloses the use of nitrogen and carbon dioxide gases to treat goods located in ships (col.1, lines 14-15 and lines 43-47). Furthermore, Fiorenzano, Jr. does not specify any type of ship, and then ships that utilize motive power are included. However, a boiler is an integral part of a

motive power. Thus, a person having ordinary skill in the art of treating goods would have been motivated to utilize the teachings of Banks to Fiorenzano, Jr. so that the storage of large quantities of agricultural products as on a ship is preserved (Fiorenzano, Jr., col.1, lines (16-18).

(11) Response to Argument

On pages 3-4 of the brief, appellant argues that, "Fiorenzano actually teaches away from the use of nitrogen and carbon dioxide gases, stating that the use of nitrogen and carbon dioxide gases is a part of the prior art which Fiorenzano does not use".

Fiorenzano discloses that the use nitrogen and carbon dioxide as reducers of aerobic organisms is known in the treatment of goods regardless of whether this teaching is part of prior art or part of the invention. Fiorenzano teaches away from using toxic chemicals that present health risks with regard to chemicals that reduces the amount of microorganisms and insects by intoxication (col.1, lines 48-48 and lines 51-52). However, Fiorenzano teaches that the other methods have limited efficiency (col.1, line 50). This statement does not constitute "teaching away from the use of nitrogen and carbon dioxide" rather suggests that every method of treating goods has its advantages and has its drawbacks. Furthermore, the only reason Fiorenzano was applied is to show that it is known to treat goods located in ships, which inherently have boilers and smoke stacks, by using nitrogen and carbon dioxide gases (col.1, lines 14-15 and lines 43-47). Fiorenzano reference was not used for its UV lamps to oxidize the air of a storage system. As a result, one having ordinary skill in the art would have been motivated to modify Banks method to include using the exhaust of ships so that the

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storage of large quantities of agricultural products as on a ship is preserved (Fiorenzano, col.1, lines 16-18). Please note that Banks et al teaches the exhaust of any source of motive power can be utilized to treat goods with nitrogen and carbon dioxide. This teaching is generic that choosing any specific exhaust source is obvious.

On page 4 of the brief, appellant argues that, "Instead, such a motivation appears to be a post hoc rationalization made with the present invention firmly in mind".

Both references teach that nitrogen and carbon dioxide gases are used to treat goods such that Banks et al discloses that the exhaust of any engine can be used as a source for carbon dioxide and nitrogen whereas Fiorenzano teaches of treating goods in ships. As a result, one having ordinary skill in the art would have been motivated to modify Banks method to include using the exhaust of ships so that the storage of large quantities of agricultural products as on a ship is preserved (Fiorenzano, col.1, lines 16-18). Thus, the rationalization is based solely on the references not on the invention. Again Banks et al teaching is so generic that choosing any specific exhaust source is obvious.

On page 4 of the brief, appellant argues that, "Fiorenzano does not teach that its electrical heating coils or UV lamps, used to oxidize particles within the storage air, are in any way related to a source of motive power for a containment vessel or boiler operations for an oil extraction operation".

The only reason Fiorenzano was applied is to show that it is known to treat goods located in ships by using nitrogen and carbon dioxide gases (col.1, lines 14-15 and lines 43-47) and not for its electrical heating coils or UV lamps as a source of

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motive power for vessel or boiler operations for an oil extraction operations. In addition, boilers are integral parts of a motive power on transport ships since Fiorenzano discloses treating goods in ships in general. With regard to using the exhaust of a boiler in the oil extraction plants, Banks teaches that the exhaust of any type of engine can be used to generate carbon dioxide and nitrogen gases to treat goods (col.4, lines 62-68). Boilers inherently contain exhaust outlets since they combust fuels to generate steam. It would have been obvious to one having ordinary skill in the art to use exhaust gases from boilers in oil extraction or any type of plant to treat goods since Banks discloses that any type of engine's exhaust can be utilized to generate carbon dioxide and nitrogen gases in the treatment of goods. In addition, since Banks teaches that the exhaust of any combustion engine can be utilized in the treatment of goods, then using the exhaust of boilers in oil extraction plants or the exhaust of any system is obvious and does not produce any unexpected results.

On page 4 of the brief, appellant argues that, "The cited art provides no proper suggestion of the need for combining the references and no proper showing that such a combination would result in the claimed invention".

As mentioned above, Banks et al teachings are generic with respect to the source of an exhaust, such that any exhaust can be utilized to treat goods with carbon dioxide and nitrogen. Fiorenzano teaches that it is known to treat goods located in ships, such that the need of combining the two references is for the preservation of large quantities of agricultural products stored in ships (Fiorenzano, col.1, lines 16-18). Thus, the generic teachings of Banks et al with respect to the source of exhaust

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combined with the teachings of Fiorenzano of treating goods in ships result in the claimed invention.

Respectfully submitted,

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